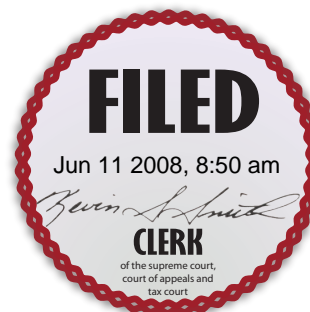


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JASON JENKINS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0711-CR-948

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0502-FA-024636

June 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Jason Jenkins appeals his aggregate sentence of twenty-four years for attempted robbery, three counts of criminal confinement, battery, intimidation, carrying a handgun without a license, and resisting law enforcement. Specifically, he contends that his sentence is inappropriate in light of the nature of his offenses and his character. Because Jenkins has failed to persuade us that his twenty-four year sentence in this case for six felonies and two misdemeanors committed against three individuals just five months after his release from a six-year prison sentence in New York for a violent offense is inappropriate, we affirm.

Facts and Procedural History

The underlying facts of this case, taken from this Court's opinion on Jenkins' first direct appeal, are as follows:

On February 14, 2005, Jenkins and Tyrone Denny drove to Quantico Brisker's home. Brisker, who was a marijuana dealer and had over eighteen pounds of marijuana at his home, pulled into his driveway, saw the men, and quickly attempted to enter his home. Jenkins and Denny caught up with Brisker and hit Brisker on his forehead with handguns rendering him unconscious. When Brisker regained consciousness, Jenkins and Denny were kicking him. Jenkins and Denny forced Brisker to unlock the door to his home and allow them to enter.

Brisker's wife and son were at home when the men entered. Jenkins and Denny repeatedly asked Brisker at gunpoint where he kept his money. Brisker and his wife went to their spare bedroom and offered to let the men have the marijuana stored there, but Jenkins and Denny refused. The wife called for her son to join them in the spare bedroom.

Denny and Jenkins made Brisker remove all his clothing. Denny then forced Brisker to walk to the garage while Jenkins, who had a gun, remained with the wife and son in the spare bedroom. The wife held the son on her lap and closed her eyes to pray. When she opened her eyes, she realized that Jenkins had left the room. The wife and son left the room to look for Brisker.

Denny then reentered the home, encountered the wife and son, and placed a gun to the son's head telling the wife he would shoot the son if the wife did not tell Brisker to open the garage door.

The police arrived at the home, and Denny released the son. Jenkins jumped the home's fence and attempted to run away. Denny then attempted to jump the fence. Both were apprehended. The State charged Jenkins and Denny with [Class A felony] attempted robbery, three counts of [Class B felony] criminal confinement, [Class C felony] battery, [Class C felony] intimidation, [Class D felony] pointing a firearm, [Class A misdemeanor] carrying a handgun without a license, and [Class A misdemeanor] resisting law enforcement. The jury found Jenkins not guilty of pointing a firearm but guilty of the lesser-included offense of attempted robbery as a Class B felony, and guilty of all of the other charges.

At sentencing, the trial court found as an aggravator that Jenkins had previous felony convictions for assault with intent to commit severe injury and for possession of a narcotic drug. The trial court found as a mitigator that Jenkins had a child. The trial court ordered Jenkins to serve his sentences for attempted robbery, confinement of the wife, and intimidation consecutively, resulting in an aggregate sentence of twenty-four years.

Jenkins v. State, No. 49A02-0609-CR-775 (Ind. Ct. App. May 16, 2007), *trans. denied*.

Jenkins appealed, and this Court affirmed Jenkins' convictions but remanded for clarification of the trial court's sentencing order. Specifically, we held that because the trial court found one aggravator, one mitigator, and concluded that they balanced, consecutive sentences were improper. *Id.* However, we noted that because there were multiple victims, this factor could justify consecutive sentences. *Id.*

A re-sentencing hearing was held on September 28, 2007. Following our suggestion, the trial court found an additional aggravator, the presence of multiple victims, and imposed the same sentence. Jenkins now appeals his sentence.¹

Discussion and Decision

¹ Although Jenkins was re-sentenced in September 2007, his crimes occurred in February 2005, which is before the amendments to our sentencing statutes. Therefore, the presumptive sentencing scheme still applies. *See Guterth v. State*, 868 N.E.2d 427, 431 n.4 (Ind. 2007) (noting that the sentencing statute in effect at the time a crime is committed governs the sentence for that crime).

Jenkins raises one issue on appeal.² Specifically, he contends that his aggregate sentence of twenty-four years is inappropriate in light of the nature of his offenses and his character pursuant to Indiana Appellate Rule 7(B). Appellate Rule 7(B) provides, “The Court may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offenses, Jenkins, who wanted to take money from a drug dealer, hit Brisker on the forehead with a handgun, rendering him unconscious. And when Brisker regained consciousness, Jenkins was kicking him. Jenkins, armed with a gun, then held Brisker’s wife and son in a room while Brisker’s wife, holding her son, prayed for safety. When the police arrived, Jenkins attempted to flee. Although Denny may have played a greater role in these crimes, Jenkins was no doubt a willing and active participant.

Regarding the character of the offender, the PSI reflects that Jenkins, who was twenty-three years old at the time of the instant offenses, has a 1998 conviction in New York for Assault with Intent to Cause Severe Injury,³ was sentenced to six years, and was

² To the extent that Jenkins raises additional arguments on appeal, such as that the trial court found an improper aggravator or gave an aggravator too much weight, Jenkins has waived these arguments for failure to analyze them separately and make cogent arguments. *See* Ind. Appellate Rule 46(A)(8)(a).

³ Jenkins argues on appeal that this crime is “remote[] in time” and is therefore deserving of little weight. Appellant’s Br. p. 8. However, as noted above, Jenkins was incarcerated for this crime for six years, from 1998 until 2004, and was released from prison a mere five months before he committed the instant offenses. In light of Jenkins’ lengthy prison sentence separating the instant offenses from Jenkins’

released from custody on September 13, 2004, just five months before he committed these crimes. Jenkins also has a 1998 conviction in New York for Possession of a Narcotic Drug. The PSI also reflects that while Jenkins was incarcerated in New York, he got into a fight with an inmate. In addition, while Jenkins was incarcerated in this case, he took the property of another inmate and when that inmate asked for his property back, Jenkins threw him down and kicked him in the face. Although Jenkins argues that he has a child to care for, his actions do not comport with those of a responsible parent. Jenkins has failed to persuade us that his twenty-four year sentence in this case for six felonies and two misdemeanors committed against three individuals just five months after his release from a six-year prison sentence in New York for a violent offense is inappropriate. We therefore affirm the trial court.

Affirmed.

MAY, J., and MATHIAS, J., concur.

previous offense in New York, Jenkins' attempt to classify his New York conviction as remote in time is not persuasive.